SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 1049, October Term, 1966.

NORMAN F. DACEY, ET AL,

Appellants

vs.

GRIEVANCE COMMITTEE OF THE BAR OF FAIRFIELD COUNTY,

Appellee

On Appeal From The Supreme Court Of The State Of Connecticut.

APPELLANTS' PETITION FOR REHEARING.

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I.

PETITION FOR REHEARING.

Appellants present their petition for a rehearing of the above entitled cause, and, in support thereof, respectfully show:

II.

GROUNDS FOR REHEARING.

The main thrust of appellee's motion to dismiss is

that appellants' activities clearly fall within the ambit of § 51-88 of the General Statutes of Connecticut and therefore appellants cannot complain either that they were unaware that their conduct was prohibited or that their rights were violated.

The factual situation involved in the instant case has not heretofore been considered by the Supreme Court of Connecticut. In fact, only two cases involving the unauthorized practice of law have been considered by the Supreme Court of Connecticut. **Grievance Committee v. Payne,** 128 Conn. 325 raised the question of whether the preparation and delivery of certificates of title by a town clerk who was not an attorney constituted the unauthorized practice of law. And **State Bar Association v. Connecticut Bank & Trust Co.,** 145 Conn. 222, and 146 Conn. 556 involved the question of whether the activities of the trust department of a bank constituted the unauthorized practice of law.

Both the **Payne** and the **Connecticut Bank** cases involved factual situations which differed materially from the appellants' activities. Whether the appellants, in supplying form wills and trusts, were "practicing law" has never been considered in Connecticut. Consequently, for appellee to argue or the Court to hold that appellants' activities **clearly** violate the statute is unrealistic. Forms of legal documents are sold in many stationery stores throughout the country. Yet it has not been contended that the owners of these stores are practicing law simply because they sell these forms.

To sustain summarily the action of the Connecticut

Supreme Court would be to encourage Connecticut to make **ad hoc** determinations in all so-called "unauthorized practice of law" cases, a determination which the Court can make without any legally fixed preexistent standard. See **Giaccio v. Pennsylvania,** 382 U.S. 399, 403. Yet this unfettered power in the Court is precisely what the 14th Amendment seeks to prohibit.

Whether the same difficulties would exist had the Connecticut Supreme Court attempted to define, in prior cases, the phrase "practice of law" is not in issue, for the Court has made no such attempt. It has stated that:

> "The mere fact that some activities might be engaged in which would be so close to the border line that informed members of the bar might differ as to whether they did or did not constitute the practice of law is of no assistance to this defendant. There is nothing to indicate that the particular legal activities which are involved in this case are of such a character that they are not clearly embraced in the phrase "practice of law". Consequently, the statute is not unconstitutionally ambiguous in its impact on the defendant. **Hardware Mutual Casualty Co. v. Premo,** supra, 471. His three basic activities which are adversely affected by the statute, and by the judgment, are and always have been commonly understood to be the practice of law. The claim of unconstitutionality for vagueness is, as to this defendant without merit."

Grievance Committee v. Dacey, et al, 154 Conn. 129,

147-48. However, what of the other activities other than appellants' alleged "three basic activities"? Are these, too, prohibited by the statute? This question the Court certainly has left unanswered. It has left appellants in the same position now as they were in prior to the commencement of the instant proceedings in the Superior Court — threatened with criminal prosecution under Sec. 51-88 of the Connecticut statutes, the scope, breadth and meaning of which appellants and the Court can only guess.

The position in which appellants are placed is identical to that in which the appellants in **Connally v. General Construction Co.** 269 U.S. 385 were placed. Appellants know not what course of conduct they may pursue. They may act, but only upon threat of criminal sanctions and contempt of Court.

There can be no doubt that any penal statute must be sufficiently clear and explicit to inform those subject to it what conduct will render them liable to its penalties. However, where the statute is one involving the unauthorized practice of law, there is an especial obligation on both the bar and the bench to see that the statute clearly apprises a layman of what activities he might perform and what activities are exclusively within the province of an attorney. Section 51-88 clearly and admittedly fails to satisfy this standard.

CONCLUSION.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and

that, upon further consideration, the judgment of the Supreme Court of the State of Connecticut be reversed.

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CERTIFICATE OF COUNSEL.

I, George A. Saden, Counsel for the above-named appellants, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

GEORGE A. SADEN,
Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

DACEY ET AL. *v.* GRIEVANCE COMMITTEE OF BAR OF FAIRFIELD COUNTY.

APPEAL FROM THE SUPREME COURT OF CONNECTICUT.

No. 1049. Decided April 17, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.